

STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION  
DOCKET NO. 2004-90-W/S – ORDER NO. 2004-574

JANUARY 14, 2005

IN RE:	Application of Total Environmental	)	ORDER ON
	Solutions, Inc. for Approval of an Adjustment	)	RECONSIDERATION
	of Rates and Charges for Water and Sewer	)	
	Services.	)	

On September 17, 2004, the Public Service Commission of South Carolina (the “Commission”) issued Order No. 2004-434 in this docket (the “Order”). This matter comes before the Commission on Petitions for Reconsideration of the Order filed by the Foxwood Hills Property Owners Association (Foxwood Hills POA) and by Total Environmental Solutions, Inc. (TESI or the Company), respectively.

**I. Foxwood Hills POA Petition for Reconsideration**

Foxwood Hills POA petitioned for reconsideration concerning the requirement stated on page two of Appendix A to Order No. 2004-434 that any person who reconnects within 10 months of being disconnected will be charged for the time that service was disconnected. According to the Foxwood Hills POA, this may cause a hardship on persons who are disconnected for inability to pay their bills. We deny this Petition.

As a public utility in South Carolina, TESI must be prepared to make water and sewer services available to its entire customer base seven days a week, three hundred and sixty five days a year. TESI must keep and maintain the treatment and delivery systems and infrastructure necessary to meet that obligation.

The provision that the POA challenges helps to ensure that TESI's annual revenue stream is predictable and relatively constant within the Foxwood Hills service area. TESI's water and sewer systems must be built and maintained to serve all property owners regardless of whether they are using their property, and all property owners must contribute to the fixed costs of the system.

Further, there is nothing in the record expressly addressing this issue other than the Company's testimony supporting its Application and associated tariff. No testimony or documentation opposing this provision was received. If property owners believe that they are burdened by this provision in the future, they may register complaints with the Office of Regulatory Staff and request a Commission hearing, pursuant to the applicable Commission Rules and Regulations. Accordingly, the Petition for Reconsideration filed by the Foxwood Hills Property Owners Association is denied.

## **II. TESI's Petition for Reconsideration**

TESI's Petition for Reconsideration concerned a number of issues. These will be discussed below.

### **A. Commission Decision to Eliminate \$19,043 in Direct Wages and Benefits for TESI's Field Technician**

First, TESI alleges that this Commission erred in eliminating \$19,043 that TESI claimed in direct wages and benefits for a third field technician. The Commission accepted the Commission Staff's recommendation to eliminate \$19,043 in direct wages and benefits during the test year for this technician. Order No. 2004-434 at 14. We based our decision to reject this expense upon our finding that TESI had not replaced the technician at the time of the hearing, that the expense was not known and measurable. Id.

TESI states that the Commission should have allowed the expense, based on the fact that the salary was paid for part of the test year, and that the technician is essential to the proper operation of the Foxwood system, and needs to be filled. We deny this portion of the Petition and reaffirm our holding in Order No. 2004-434. Indeed, the field technician at issue had not been replaced at the time of the hearing. No one knew when or if said technician would be hired. Accordingly, we were correct in stating that the amount was not known or measurable, and the Commission Staff's adjustment was properly adopted.

**B. Commission Decision to Eliminate Approximately \$21,800 in Affiliated Services Costs**

Second, TESI states that this Commission erred in eliminating approximately \$21,800 in affiliated services costs. In making this adjustment to TESI's proposed test year expenses, the Commission adopted Staff's adjustments in approximately three areas: General Administrative and Office Expenses; Depreciation –Office Building in Baton Rouge, Louisiana.; and TESI's calculated 20% and 5% coverage factors. TESI takes issue with the Commission's acceptance of Staff's position concerning each of these adjustments.

We reverse our position, and hereby grant depreciation expense, based on the discussion appearing in section II. D. of this Order. However, we reaffirm our positions taken in Order No. 2004-434 and reject TESI's positions on the coverage factors. We adopted Staff's positions in that Order and stated our reasoning therefore. The Company has cited no evidence that would cause us to modify our position on this matter.

**C. Commission Decision to Reject TESI's Proposed Asset Base Correction**

Third, the Company asserts that this Commission erred in failing to correct TESI's asset base, establishing a rate base for TESI's Foxwood system of \$3,749,759, with corresponding increases in TESI's test year depreciation and interest expenses. In the alternative, TESI asserts that the Commission erred in rejecting the Staff's "alternative" rate base proposal, which would have established TESI's rate base at \$1,609,342 at the end of the test year.

Although we reject TESI's assertion that our failure to establish either of these rate bases was error, we do note that our decision on TESI's next allegation of error results in the establishment of a positive rate base and in the Commission's recognition of depreciation and interest expense for the first time in this case. A further explanation is contained infra.

**D. Commission Decision to Characterize Approximately \$351,756 in Enhancement Fee Income as Contributions in Aid of Construction**

TESI's fourth allegation of error is that this Commission erred in characterizing approximately \$351,756 as enhancement fee "income," and then treating the entire amount as contributions in aid of construction. In calculating TESI's rate base, Staff asserted that TESI's 2002 and 2003 enhancement fee income should be counted against TESI's rate base as contributions in aid of construction. In determining what was to be included in "income," Staff proposed that the Commission include not just enhancement fees that TESI had actually *collected*, but those that TESI had *billed* during these two years. TR., Vol.3 at 40-41.

We ultimately adopted the Staff's position in its entirety. Order No. 2004-434 at 19-22.

TESI alleges that counting billed instead of collected enhancement fee amounts as contributions in aid of construction directly violates the NARUC Uniform System of Accounts. Section 271, "Contributions in Aid of Construction," specifies that the amount shall only include: "A. 1. Any amount or item of money, services or property *received* by a utility...4. Any amount of money *received* by a utility...." [emphasis added].

TESI states that the Commission's decision regarding enhancement fees also violates a holding in the Supreme Court case of *Total Environmental Solutions, Inc. v. South Carolina Public Service Commission*, 351 S.C. 175, 568 S.E. 2d 365 (2002) ("*TESI*"). In *TESI*, the Court held that the Commission may not treat enhancement fees as operating income when the record is void of any evidence that the utility received or directly benefited from the fees. TESI contends that since it received no benefit from 2002 and 2003 enhancement fees that it billed, but did not collect, counting them as contributions in aid of construction violates that part of the *TESI* holding.

Although we take no position on TESI's last argument, after due consideration, we do agree it would violate the NARUC Uniform System of Accounts to count *billed* enhancement fees as contributions in aid of construction. Section 271 contemplates contributions in aid of construction to include only amounts actually *received* by a utility.

Since we counted all billed enhancement fees in Order No. 2004-434, we must reverse our position on this issue and base our rate decision only upon enhancement fees actually collected. It has been established that TESI's actual collections for 2002 were

the billed amount of \$175,728 minus bad debt of (\$147,735), or \$27,993, and for 2003, the billed amount of \$167,037 minus bad debt of (\$124,392), or \$42,645. Therefore, it is correct to remove \$70,638 in enhancement fees from the Company's rate base. Accordingly, we find that when we correctly include \$70,638 in enhancement fees and \$19,300 in tap fees, TESI's contributions in aid of construction are \$89,938. This results in a positive rate base of \$218,838 using the allocated purchase price method as contained in witness Scott's Surrebuttal Exhibit 1; Hearing Exhibit No. 8.

The Commission finds that the existence of a positive rate base requires the application of depreciation expense to the test year. Based upon the \$218,838 rate base, calculated depreciation expense is \$3,377. (Net plant of \$179,640 x 1.88%).

We also find that the positive rate base requires the Commission to apply interest expense in calculating TESI's operating margin and resulting rates. We find that interest expense is \$4,195. We based this finding upon the fact that this is the interest expense derived from the Surrebuttal Testimony of witness Scott. Scott's testimony explained that based on the Company's depreciation study, the Staff calculated a rate base of \$1,609,342. (See Surrebuttal Testimony Exhibit 1; Hearing Exhibit 8). Scott's Surrebuttal Testimony stated that if the Commission decided to use the results of the study, allowable interest expense would be \$30,848. An overall interest rate can be computed by dividing the \$30,848 interest expense by the rate base contained in the depreciation study of \$1,609,342. The results of above calculation can then be applied to the rate base approved herein of \$218,838. The results of the calculation produce interest expense of

\$4,195  $((\$30,848/\$1,609,342) \times \$218,838)$ ). We believe that this is the proper methodology to arrive at the interest expense, based on this record.

After making these adjustments to our previous findings, we find TESI's total operating revenues after full implementation of this rate increase become \$621,424, total operating expenses become \$492,922, and Net Operating Income and Total Income for Return become \$128,502. Phase 1 and Phase 2 rates have been adjusted accordingly to maintain the same operating margins the Commission originally approved in the Order for those phases. Table B, attached hereto and incorporated herein, reflects the phase in of the 20% operating margin and the modified revenue requirement for Phases 1, 2 and 3. These calculations replace those set forth in Table B of the Order. Appendix A, also attached hereto and incorporated herein, sets forth the new rates and charges resulting from these modifications. Accordingly, we grant partial reconsideration of Order No. 2004-434 as outlined herein.

**E. Commission Decision to Adopt a Phased-in Rate Structure that Implements TESI's Rates in Three Annual Phases**

TESI's final allegation is that this Commission erred in adopting a phased-in rate structure contingent upon certain DHEC approvals for Phases 2 and 3, that requires TESI to operate under a negative operating margin during the first year, and only implementing the required 20% operating margin in the third year.

We continue to affirm our right as a Commission to phase in rates when we believe that the overall effect of granted rates will result in "rate shock" to a utility's customers. In this case, the rate increase upon implementation of the full amount is substantial. We believe that the effect on TESI's customers would be devastating if

implemented all at once. A phase-in of rates is most appropriate. Although we understand TESI's attempt to distinguish this case from Hamm v. South Carolina Public Service Commission, 294 S.C. 320, 364 S.E. 2d 455 (1988), despite some factual distinctions, the application of the "phase-in" principle found in Hamm is reasonably applicable to situations such as those found in the case at bar, where large rate increases are in store for consumers. Slight differences in the facts do not make the case inapplicable for consumers. We reaffirm our holding on the phase-in and the value of it to the customers of the Company.

### **III. Conclusion**

In summary, we deny the allegations of TESI's Petition for Reconsideration, except as indicated above. Our holding does result in rates for each phase of the phase-in which are different from those found in Appendix A to Order No. 2004-434. Accordingly, we hereby update the rates found in that Order by the issuance of Appendix A to this Order. These rates shall take effect upon issuance of this Order.

#### **IT IS THEREFORE ORDERED THAT:**

1. The Commission hereby affirms all of the findings and conclusions of the Order, except as modified herein.
2. The schedule of rates and charges attached hereto as Appendix A is hereby approved for service rendered on or after the date of this Order. Further, the schedules are deemed to be filed with the Commission pursuant to S.C. Code Ann. Section 58-5-240 (2003).



3. Should the schedules approved herein and attached hereto as Appendix A not be placed in effect until three (3) months from the effective date of this Order, the schedules shall not be charged without written permission from the Commission.

4. TESI shall maintain its books and records for water and sewer operations in accordance with the NARUC Uniform System of Accounts for Class B Water and Sewer Utilities, as adopted by this Commission.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
G. O'Neal Hamilton, Vice Chairman

(SEAL)